

REMARKS

The claims remaining in the present application are Claims 1-40. The Examiner is thanked for performing a thorough search. Claims 1, 10, 16, 25, and 33 have been amended. No new matter has been added. For example support for the amendments to independent Claims 1, 10, 16, 25 and 33 can be found among other places in the first paragraph of page 16 of the instant application 10/769,090, which states in part,

The difference between Figure 4B, and Figure 4C, is that in Figure 4C a change in channel condition...has caused the identification of a different preferred access point...Figure 4C shows that the majority of the data packets that are transmitted from the sender 301 to the receiver 309 are transmitted through the newly preferred access point 307.

CLAIM REJECTIONS

35 U.S.C. §101

Claims 26-32

In paragraph 2 of the Office Action, Claims 26-32 are rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. The Office Action goes on to state "the 'computer useable medium,' in accordance with Applicant's specification, may be an electromagnetic signal since there is no disclosure that discusses which types of mediums could be used as the computer usable medium." Applicants traverse this rejection. Applicants respectfully point out that any one of ordinary skill in the art would understand what is meant by computer usable medium. Further Claim 25 clearly recites "computer useable medium having computer useable code embodied therein for causing a computer to perform operations comprising" (emphasis added). "A computer usable medium having computer useable code embodied therein" is clearly a tangible physical article, as anyone of ordinary skill in the art would understand. Claim 25 goes on to recite steps for a process. Therefore, Claims 26-32 should be patentable.

35 U.S.C. §102

Claims 1, 2, 3, 6, 7, 9-12, 15-18, 20, 25, 26, 29, 30, 32-34, 37, 38, and 40

In paragraph 1 of the Office Action, Claims 1, 2, 3, 6, 7, 9-12, 15-18, 20, 25, 26, 29, 30, 32-34, 37, 38, and 40 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6, 594,245 by Rimhagen et al. (referred to hereinafter as "Rimhagen"). Applicants respectfully submit that embodiments of the present invention are neither taught nor suggested by Rimhagen.

Amended independent Claim 1 recites,

A method for delivering data, in a wireless system comprising a distributed infrastructure of access points, said method comprising: identifying a plurality of access points to be used cooperatively in combination with each other for the transmission of said data to a receiver, wherein said cooperative usage of said plurality of access points is maintained for at least some portion of a data transmission period; [[and]] enabling the transmission of said data to said receiver via said plurality of access points, wherein said data is transmitted in a pattern that uses at least two access points during at least some portion of said data transmission period; and determining, during the transmission, performance of at least one of said access points being used for the transmission to enable transmitting at least a portion of said data through a different access point while the transmission is in progress.

Applicants respectfully submit that Rimhagen does not teach or suggest among other things, "determining, during the transmission, performance of at least one of said access points being used for the transmission to enable transmitting at least a portion of said data through a different access point while the transmission is in progress," as recited by Claim 1.

Rimhagen teaches a method and system for enabling a remote communication station to engage multiple communication stations. For example, Rimhagen teaches at Col. 1 line 61 to Col. 2 line 9 that multiple communication stations may be used if the single communication station that is selected can not accommodate the requested bandwidth. Rimhagen teaches using multiple communication stations when a single communication station will not suffice. However, no where does Rimhagen teach "enabling the transmission of said data..." using "at least two access points... determining, during the transmission, performance of at least one of said access points being used for the transmission to enable transmitting at least a portion of said data through a different access point while the transmission is in progress," as recited by Claim 1. Therefore, independent Claim 1 should be patentable over Rimhagen. In dependent Claims 10, 16, 25 and 33 should be patentable over Rimhagen for similar reasons.

Although the independent Claims 1, 10, 16, 25 and 33 were all rejected under 35. U.S.C. 102(e) on the basis of Rimhagen, for the purposes of expediting prosecution of the instant application, the following shall demonstrate why future Office Actions cannot rely on Nakamichi to remedy the deficiency in Rimhagen.

Nakamichi teaches a device and method for collecting traffic information. Referring to paragraph 0017, Nakamichi teaches that the traffic information is collected and communicated to all of the nodes in a communication network so that all of the nodes can grasp the conditions of the traffic of each link in the communication network. Referring to paragraph 0059, Nakamichi teaches the use of flooding the communication network with traffic to obtain the performance information that is then communicated to all of the nodes. In paragraph 0136 Nakamishi teaches that the routers can be classified into groups based on the results of flooding. Nakamishi provides details on various flooding methods from paragraph 0106 to paragraph 0143.

Therefore Nakamichi teaches away from “determining, during the transmission, performance of at least one of said access points being used for the transmission to enable transmitting at least a portion of said data through a different access point while the transmission is in progress,” (emphasis added) as recited by Claim 1. For this reason, Nakamichi cannot be combined with Rimhagen to suggest embodiments, recited by the independent Claims 1, 10, 16, 25 and 33.

Claims 2-9 depend on Claim 1. Claims 11-15 depend on Claim 10. Claims 17-24 depend on Claim 16. Claims 26-32 depend on Claim 25. Claims 34-40 depend on Claim 33. These dependent claims include all of the limitations of their respective independent claims. Further these dependent claims include additional limitations which further make these dependent claims patentable. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.


CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments and amendments presented above, it is respectfully submitted that Claims 1-40 overcome the rejections of record. For reasons discussed herein, Applicants respectfully request that Claims 1-40 be considered by the Examiner. Therefore, allowance of Claims 1-40 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicants invite the Examiner to contact the Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,
WAGNER BLECHER LLP

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John P. Wagner Jr.
Registration No. 35,398

Address:

Westridge Business Park
123 Westridge Drive
Watsonville, California 95076 USA

Telephone:

(408) 377-0500 Voice
(408) 234-3749 Direct/Cell
(408) 763-2895 Facsimile